

Audiovisual Media Services

The European Council and the European Parliament have reached agreement on a new Audiovisual Media Services Without Frontiers Directive after a legislative process of 18 months, a relatively short period for a Directive to be presented and agreed upon at EU level.

The new Directive updates and replaces the 1989 TV without Frontiers Directive, which is limited to television programmes. The Audiovisual Media Services Directive extends the laws governing television broadcasters to companies providing audio or video content online regardless of the mode in which it is transmitted. Thus, content on the internet, mobile telephony as well as video on demand have been encompassed by the rules of this new Directive, which is very wide in scope, intended as it is to create a harmonized EU regulatory regime covering all audiovisual media services, especially on-demand content.

These modernized rules are intended to upgrade the current law regime to maintain consistency with the developments taking place in the technological world. There is no reason why traditional broadcasts, such as television, should be treated at a regulatory level differently from on-demand media, whose main characteristics are user choice and control.

At the heart of this new Directive is the freedom of audiovisual media service providers to establish themselves in any member state of their choice. However, service providers would tend to circumvent stricter measures of the target member state by establishing themselves in a member state that lays down less strict rules and from there provide their services to the target member state. To avoid possible circumvention, the new Directive contains a new procedure entailing member states to enter into a dialogue to resolve any such difficulties between them. Naturally this requires a positive attitude from both sides. Failing agreement, the European Commission would then get involved in order to ascertain that the stricter rules imposed by the target state are compatible with Community law, are objectively necessary and applied in a non-discriminatory manner.

The new Directive also safeguards receivers of on-demand content or of other types of audiovisual media services by imposing a degree of responsibility on audiovisual media service providers. For example internet users accessing online data should be able to identify clearly the source of such data. In this respect, member states are obliged to lay down rules to ensure that users have easy access to the person responsible for the choice of the audiovisual content of a service.

This Directive is not intended however to overload the industry with complicated rules, but rather is intended as a comprehensive framework that reduces the regulatory burden. Flexibility and self-regulation are encouraged by the Directive, whose rules are strictly limited to the minimum needed to achieve consumer protection, especially the protection of minors.

The Directive relies on national media regulators to co-ordinate between them for the promotion of a healthy audiovisual media environment. It underlines the need for

media regulators at national level to be completely independent in order to allow democracy as well as media pluralism to thrive.

The new Directive aims at creating a more competitive audiovisual industry in the EU. The Directive is expected to be adopted by the end of this year.

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